

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARY A. WICKMAN,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 3:19-CV-05921-RSM

ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTORNEY FEES
PURSUANT TO 42 U.S.C. § 406(b)

Presently before the Court is Plaintiff Mary A. Wickman's Motion for Attorney Fees under 42 U.S.C. § 406(b). Dkt. #27. Plaintiff seeks attorney's fees in the amount of \$5,469.33. *Id.* at 1.¹ This amount comes from 25% of Plaintiff's retroactive benefits, \$14,401.25, minus the fee of \$8,931.92 previously ordered under the Equal Access to Justice Act (EAJA). Dkt. #28 at 2. "The Commissioner takes no position on the request to award a netted 406(b) award." Dkt. #30 at 4. However, if Plaintiff's netted fee request is granted, the Commissioner "requests that the Order distinguish between the full amount determined as reasonable under 406(b) and the net amount awarded for payment purpose." *Id.*

¹ Plaintiff's fee request for \$5,496.33 appears to have transposed two digits. Dkt. #30 at 2. The correct amount Plaintiff requests is \$5,469.33.

1 Attorney's fees may be awarded to a successful social security claimant's lawyer for his
2 or her representation before a court pursuant to 42 U.S.C. §§ 406(b). *Straw v. Bowen*, 866 F.2d
3 1167 (9th Cir.1989). Plaintiff must apply to the Social Security Administration for an award of
4 fees for representation at the administrative level. 42 U.S.C. § 406(a); *Stenswick v. Bowen*, 815
5 F.2d 519 (9th Cir.1987). Under 42 U.S.C. § 406(b), the Court may allow a reasonable fee for an
6 attorney who represented a Social Security Title II claimant before the Court and obtained a
7 favorable judgment, as long as such fee is not in excess of 25% of the total past-due benefits. *See*
8 *Grisbrecht v. Barnhart*, 535 U.S. 789 (2002).

10 Fee awards may be made under both the EAJA and § 406(b), but the claimant's attorney
11 must refund to the claimant the amount of the smaller fee. *See Grisbrecht v. Barnhart*, 535 U.S.
12 789, 796 (2002). Plaintiff was awarded \$57,605 in past due benefits. Dkt. #28-3 at 2. Twenty -
13 five percent of past due benefits is \$14,401.25. Plaintiff's retainer agreement with counsel agreed
14 to a twenty-five percent fee from total past-due benefits. Dkt. #28-2 at 1. The Court concludes
15 attorney fees amounting to \$14,401.25 are reasonable within the meaning of § 406(b). Because
16 the awarded EAJA fees were lesser than \$14,401.25, Plaintiff's counsel will refund directly to
17 Plaintiff the \$8,931.92 in EAJA fees that were previously awarded. *See Grisbrecht* at 796.

20 CONCLUSION

21 Accordingly, having reviewed Plaintiff's Motion, the Commissioner's Response, the
22 exhibits and declarations attached thereto, and the remainder of the record, the Court ORDERS
23 as follows:
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- 25 1) Plaintiff's Motion for Attorney Fees Pursuant to 42 U.S.C § 406(b) is GRANTED in
26 part. Plaintiff's attorney, Jeanette Laffoon, is awarded reasonable fees in the sum of
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1 \$14,401.25. Upon receipt, Plaintiff's counsel will refund directly to Plaintiff the
2 \$8,931.92 in EAJA fees that were previously awarded;

- 3 2) This payment of fees comprises 25% of Plaintiff's past-due benefits;
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5 3) Any payment of fees is from the claimant's withheld past-due benefits. If the
6 Commissioner has not withheld past-due benefits sufficient to satisfy this order and
7 Plaintiff's attorney reports she is unable to collect the fee from the claimant, the
8 Commissioner will satisfy this order via the procedures in the Program Operation
9 Manual System (POMS) GN 03920.055.C.

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11 IT IS SO ORDERED.
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14 DATED this 10th day of January, 2024.
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18 RICARDO S. MARTINEZ
19 UNITED STATES DISTRICT JUDGE
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